

THE HONORABLE TIFFANY M. CARTWRIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CANTON PORT SERVICES, LLC,

Plaintiff,

v.

M/V INDIGO SPICA (IMO No.
9708758), her engines, boilers, apparel,
tackle, boats, appurtenances, etc., *in*
rem,

Defendant.

IN ADMIRALTY

Case No. 3:23-cv-06048-TMC

ANSWER TO COMPLAINT

Pursuant to Rule C(6) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, I.M.S. Maritime S.A. (“IMS”), as Claimant to the *in rem* defendant vessel M/V INDIGO SPICA, IMO Number 9708758 (the “Vessel”), by and through undersigned counsel, hereby responds to Plaintiff’s Verified Complaint (the “Complaint”) upon information and belief as follows:

I. JURISDICTION AND VENUE

1. The averments of paragraph 1 of the Complaint are denied as conclusions of law.

2. The averments of paragraph 2 of the Complaint are denied as

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1 conclusions of law.

2 3. The averments of paragraph 3 of the Complaint are denied as
3 conclusions of law.

4 **II. JURISDICTION AND VENUE**

5 4. Answering Defendant is without knowledge or information
6 sufficient to justify a belief as to the truth of the averments of paragraph 4 of the
7 Complaint, and therefore, denies the same and demands strict proof thereof.

8 5. Answering Defendant is without knowledge or information
9 sufficient to justify a belief as to the truth of the averments of paragraph 5 of the
10 Complaint, and therefore, denies the same and demands strict proof thereof.

11 6. Admitted.

12 7. Admitted.

13 8. Answering Defendant is without knowledge or information
14 sufficient to justify a belief as to the truth of the averments of paragraph 8 of the
15 Complaint, and therefore, denies the same and demands strict proof thereof.

16 **III. STATEMENT OF FACTS**

17 9. Answering Defendant admits only that the Vessel was time
18 chartered to non-party Dragon Carriers Ltd., but denies knowledge or
19 information sufficient to form a belief as to the remainder of the allegations in
20 paragraph 9 of the Complaint concerning any sub charters of the Vessel.

21 10. Answering Defendant admits only that the Vessel arrived at Canton
22 Pier on or about July 19, 2022 for the unloading of cargo from the Vessel.
23 Answering Defendant denies that the purpose of the docking was to unload
24 distressed cargo. Answering Defendant denies the allegations concerning the
25 Master's direction and approval as conclusions of law.

26 11. Answering Defendant admits only that Canton provided stevedoring
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1 services to the Vessel between July 19, 2022 and July 25, 2022. Answering
2 Defendant denies the remaining allegations concerning the Master's direction
3 and approval as conclusions of law.

4 12. Answering Defendant admits only that the Master stamped/signed
5 Canton's reports. Answering Defendant denies the remaining allegations of
6 paragraph 12 as conclusions of law.

7 13. Denied as stated. Answering Defendant admits only that Canton
8 has issued Invoices Nos. 132468 and 132454, but denies that the copies of said
9 invoices attached as Exhibit 2 are the final versions of said Invoices.

10 14. Answering Defendant admits only that Canton has issued Invoices
11 Nos. 132468 and 132454, but denies that the copies of said invoices attached as
12 Exhibit 2 are the final versions of said Invoices. Answering Defendant is without
13 knowledge or information sufficient to justify a belief as to the truth of the
14 averments of paragraph 14 of the Complaint concerning payment of the "First
15 Call" invoices and therefore denies the same and demands strict proof thereof.
16 Answering Defendant denies the remaining allegations of paragraph 14 as
17 conclusions of law.

18 15. Answering Defendant admits only that the offloading of the Vessel
19 was not completed during the First Call and that the Vessel returned to Canton
20 Pier to complete the offloading. Answering Defendant is without knowledge or
21 information sufficient to justify a belief as to the truth of the remaining averments
22 of paragraph 15 of the Complaint, and therefore, denies the same and demands
23 strict proof thereof.

24 16. Answering Defendant admits only that the Vessel returned to
25 Canton Pier on August 6, 2022 to offload the remaining cargo. Answering
26 Defendant denies the remaining allegations concerning the Master's direction

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1 and approval as conclusions of law.

2 17. Answering Defendant admits only that Canton provided stevedoring
3 services to the Vessel between August 6, 2022 and August 12, 2022. Answering
4 Defendant denies the remaining allegations concerning the Master's direction
5 and approval as conclusions of law.

6 18. Answering Defendant admits only that the Master stamped/signed
7 Canton's reports. Answering Defendant denies the remaining allegations of
8 paragraph 18 as conclusions of law.

9 19. Answering Defendant is without knowledge or information
10 sufficient to justify a belief as to the truth of the averments of paragraph 19 of the
11 Complaint, and therefore, denies the same and demands strict proof thereof.

12 20. Answering Defendant is without knowledge or information
13 sufficient to justify a belief as to the truth of the averments of paragraph 20 of the
14 Complaint, and therefore, denies the same and demands strict proof thereof.

15 21. The averments of paragraph 21 of the Complaint are denied as
16 conclusions of law.

17 22. The averments of paragraph 22 of the Complaint are denied as
18 conclusions of law.

19 23. The averments of paragraph 23 of the Complaint are denied as
20 conclusions of law.

21 **Count I – Prayer for the Arrest of the Vessel**

22 24. Answering Defendant incorporate its responses to paragraphs 1-23
23 set forth above as though fully set forth herein.

24 25. Denied.

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1 26. Denied as stated. Answering Defendant admits only that the Master
2 signed and stamped the stevedoring invoices. The remaining averments of
3 paragraph 26 of the Complaint are denied as conclusions of law.

4 27. Answering Defendant is without knowledge or information
5 sufficient to justify a belief as to the truth of the averments of paragraph 27 of the
6 Complaint, and therefore, denies the same and demands strict proof thereof.

7 28. The averments of paragraph 28 of the Complaint are denied as
8 conclusions of law.

9 29. The averments of paragraph 29 of the Complaint are denied as
10 conclusions of law.

11 30. The averments of paragraph 30 of the Complaint are denied as
12 conclusions of law.

13 WHEREFORE, Answering Defendant demands judgment in its favor
14 along with costs and all other relief the Court deems appropriate.

15 **AFFIRMATIVE DEFENSES**

16 **First Affirmative Defense**

17 Plaintiff's Complaint fails to state a claim against Answering Defendant
18 upon which relief can be granted.

19 **Second Affirmative Defense**

20 Plaintiff is not the real party in interest or proper party to assert the claims
21 set forth in the Complaint.

22 **Third Affirmative Defense**

23 The damages alleged in Plaintiff's Complaint, if they occurred, which is
24 denied, were caused in whole or in part by acts, errors, omissions, negligence,
25 breach of warranty or breach of contract of other parties, including the Plaintiff,
26 or their agents, servants or employees, for whom Answering Defendant is not

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1 responsible.

2 **Fourth Affirmative Defense**

3 Answering Defendant claims the benefit of all defenses which may be
4 available under any applicable contracts, charter parties, bills of lading, or other
5 agreements or tariffs, including time bars, failure to give proper notice, forum
6 selection clauses, arbitration clauses, applicable law, and any other applicable
7 defenses.

8 **Fifth Affirmative Defense**

9 Plaintiff has failed to mitigate its damages.

10 **Sixth Affirmative Defense**

11 The Complaint should be dismissed on the grounds that Plaintiff has failed
12 to join one or more indispensable parties under Rule 19 of the Federal Rules of
13 Civil Procedure.

14 **Seventh Affirmative Defense**

15 The stevedoring services provided by Plaintiff were not performed upon
16 the order of the owner of the Vessel or by a person authorized by the owner and
17 therefore Canton is not entitled to assert a maritime lien against the Vessel as
18 required by 46 U.S.C. § 31342(a).

19 **Eighth Affirmative Defense**

20 Venue is improper in this District, and this action should be dismissed on
21 the grounds of *forum non conveniens*.

22 WHEREFORE, Answering Defendant demands judgment in its favor and
23 in favor of the Vessel and against Plaintiff along with the dismissal of Plaintiff's
24 Complaint with prejudice at Plaintiff's cost and such other and further relief as
25 this Honorable Court may deem proper and just under the circumstances.

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1 Dated this 11th day of December, 2023.

2 SCHWABE, WILLIAMSON &
3 WYATT, P.C.

4
5 By: /s/ Philip Lempriere
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2023, I caused to be served the foregoing ANSWER TO COMPLAINT on the following party at the following address:

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by:



U.S. Postal Service, ordinary first class mail
electronic service

/s/ Philip Lempriere

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